

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

LEONIDAS MIXON,

Plaintiff,

v.

**AMERICAN UNITED LIFE INSURANCE
COMPANY,**

Defendant.

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C.A. No. 1:17-cv-00587

DEFENDANT’S NOTICE OF REMOVAL

Defendant American United Life Insurance Company (“AUL”) files this Notice of Removal pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, and would show the Court as follows:

I. COMMENCEMENT AND SERVICE

1. On May 15, 2017, Plaintiff Leonidas Mixon (“Plaintiff” of “Mixon”) commenced this action against AUL by filing Plaintiff’s Original Petition in the 98th Judicial District Court of Travis County, Texas, styled Case No. D-1-GN-17-002111; *Leonidas Mixon v. American United Life Insurance Company*.¹

2. AUL was served with process on May 26, 2017.²

3. This Notice of Removal is timely filed within thirty days of the receipt of process of a copy of the initial pleading, from which it was ascertained that the case is one which is removable, pursuant to 28 U.S.C. § 1446(b). This Notice of Removal is also filed within one year of the commencement of this action, and is thus timely pursuant to 28 U.S.C. § 1446(c).

¹ See Exhibit 1.

² See Exhibit 2.

II. GROUNDS FOR REMOVAL

4. AUL is entitled to remove the entire state court matter to this Court pursuant to 28 U.S.C. §§ 1331 and 1332 because this action is a civil action involving: (1) a federal question; and (2) diversity of citizenship with an amount in controversy exceeding \$75,000.00.

5. Removal of the entire state court matter to this Court is also proper under 28 U.S.C. §§ 1441(a) and 1446(a) because this Court's district and division embraces the pending state court action in the 98th Judicial District Court of Travis County, Texas.

III. FEDERAL QUESTION

6. Plaintiff's lawsuit is one over which the Court has original jurisdiction under the provisions of 28 U.S.C. § 1331 and the Employee Retirement Income Security Act of 1974 ("ERISA").

7. ERISA provides for federal jurisdiction where one or all of a plaintiff's claims against a defendant arise under and are within the scope of 29 U.S.C. § 1132(a), the civil enforcement provision of ERISA. Congress intended for such claims brought in state court to be completely preempted by federal law and tried in federal court, and the United States Supreme Court has ruled that ERISA broadly preempts state law claims that relate to ERISA-governed plans. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47 (1987).

8. In this action, Plaintiff seeks the recovery of disability benefits under the provisions of group ERISA-governed benefit plan, which addresses areas of exclusive federal concern.³ See *McNeil v. Time Ins. Co.*, 205 F.3d 179, 191 (5th Cir. 2000) (stating that preemption applies when a claim addresses an area of exclusive federal concern, such as the right to receive benefits under the terms of an ERISA plan.).

³ See Exhibit 1, p. 2.

IV. DIVERSITY OF CITIZENSHIP/AMOUNT IN CONTROVERSY

9. This is also an action with complete diversity of citizenship between Plaintiff and AUL.

10. Plaintiff resides in the state of Washington.⁴ Plaintiff is therefore a citizen of Washington within the meaning and intent of 28 U.S.C. § 1332.

11. AUL is incorporated in the State of Indiana and maintains its principal place of business in Indiana. AUL is therefore a citizen of Indiana within the meaning and intent of 28 U.S.C. § 1332.

12. No change of citizenship has occurred since commencement of the state court action. Accordingly, diversity of citizenship exists among the proper parties.

13. According to the Petition, Plaintiff seeks monetary relief over \$200,000.00.⁵ Therefore, Plaintiff's Petition establishes that the total amount in controversy in the action exceeds the sum of \$75,000.00, and this Court has jurisdiction under 28 U.S.C. § 1332.

V. VENUE

14. Venue lies in the Western District of Texas, Austin Division, pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because Plaintiff filed the state court action in this judicial district and division.

VI. CONSENT TO REMOVAL

15. Because AUL is the only defendant, all defendants join in and consent to this removal.

⁴ See Exhibit 1, Pet. § III.

⁵ See Exhibit 1, Pet. § II.

VII. NOTICE

16. AUL will give notice of the filing of this notice of removal to all parties of record pursuant to 28 U.S.C. § 1446(d).

17. AUL will also file with the clerk of the state court, and will serve upon Plaintiff's counsel, a notice of the filing of this Notice of Removal.

VIII. JURY DEMAND

18. Plaintiff has demanded a jury trial in the state court action.

IX. STATE COURT PLEADINGS

19. Copies of all state court pleadings and orders are attached to this Notice of Removal:

Exhibit 1: Plaintiff's Original Petition filed in state court on May 15, 2017;

Exhibit 2: Returned Citation for AUL filed on June 1, 2017;

Exhibit 3: Request for Citation; and

Exhibit 4: The Docket Sheet from the Travis County District Court.

X. CONCLUSION

WHEREFORE, American United Life Insurance Company, pursuant to the statutes cited herein and in conformity with the requirements set forth in 28 U.S.C. § 1446, removes this action from the 98th Judicial District Court of Travis County, Texas, to this Court.

Dated: June 16, 2017.

Respectfully submitted,

EDISON, MCDOWELL & HETHERINGTON LLP

BY: /s/ Blaire B. Johnson

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**ATTORNEYS FOR DEFENDANT
AMERICAN UNITED LIFE INSURANCE
COMPANY**

**Admitted to the Western District of Texas*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on June 16, 2017, on the following counsel of record by certified mail, return receipt requested:

Jon Michael Smith
3305 Northland Drive
Suite 500
Austin, Texas 78731

/s/ *Blaire B. Johnson*

Blaire B. Johnson